

Charter Review and Revision Board

Members:

Stephen Zack, Esq., Chair Aaron Perry, Vice-Chair Scott Diffenderfer Jacqueline Lalonde Rick Kendle Alex Fernandez Richard "Rick" J. Preira

Appointed by:

Mayor Matti Herrera Bower Commissioner Jerry Libbin Commissioner Jorge R. Exposito Commissioner Michael Góngora Commissioner Edward L. Tobin Commissioner Deede Weithorn Commissioner Jonah Wolfson

Staff Present Staff:

Raul Aguila, Chief Deputy City Attorney
Alexander Boksner, Senior Assistant City Attorney
Jorge Gomez, Assistant City Manager
Rafael E. Granado, City Clerk
Liliam R. Hatfield, City Clerk's Office
Gary Held, First Assistant City Attorney
Richard Lorber, Planning Director
Debora Turner, First Assistant City Attorney

MINUTES

Monday, May 6, 2013 at 3:30 p.m. Mayor's Conference Room, Fourth Floor, City Hall

The meeting was called to order at 4:41 p.m. All Charter Review and Revision Board members were present with the exception of Board Member Preira, who was tried to be reached by telephone unsuccessfully.

1. EXISTING ISSUES REQUIRING DISCUSSION/ACTION.

- a) Motion by Rick Kendle, seconded by Jacqueline Lalonde to approve the April 25, 2013 Minutes; 6-0; Absent: Member Preira.
- b) Establish future meeting dates.

The Board reached consensus, and meetings will be scheduled to begin at 4:30 PM during the following dates:

Monday, June 3 Monday, June 10 Monday, June 24 Monday, July 1st, and Monday, July 15

2. LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW Not reached.

- 3. ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER. (See paragraphs 1 through 5 of Mr. Fernandez's Memorandum; Attached as Item 3)
 - a. Motion requesting that the City Clerk advertise meeting notices, agendas, and CRB website address on Spanish publications.

ACTION: Motion made by Member Fernandez to advertise the Charter Review & Revision Board Meetings in local Spanish publications; seconded by Member Lalonde. Approved by acclamation. **Rafael E. Granado to handle.**

ITEMS NOT REACHED

- a. Motion bifurcating recommended Charter amendments to the City Commission into two tiers.
- b. Motion requesting that the City Commission consider amending City of Miami Beach resolution number 2012-28072, creating the Miami Beach Ad Hoc Charter Review and Revision Board, to enlarge its powers of review to include the City's Related Special Acts.
- c. Motion establishing that the Charter Review Board will consider all recommendations submitted by the public to the Charter Review Board.
- d. Motion requesting that the City Manager direct the Management Team and Department Directors to submit to the Charter Review Committee any areas or items that pertains to their department, which they would like for the Charter Review Board to review or discuss.

4. ADDITIONAL ITEMS REFERRED TO THE CHARTER REVIEW & REVISION BOARD BY THE CITY COMMISSION:

- a. Election versus Appointment when Commission vacancies occur. (Referred at the May 19, 2012 Commission Retreat) Not reached.
- b. Commission Salary (Referred at the May 19, 2012 Commission Retreat)4:55:38 p.m.

Chair Zack stated that he was under the impression that the Commission salary issue was not raised for review, as it is usually defeated. Rafael E. Granado clarified that this issue was referred to the Charter Review Board at the May 19, 2012 Commission Retreat and had been added to the agenda. **Issue to be discussed at a later time.**

Board Member Kendle explained that the word "emolument" is in the City Charter (Page 8, Sec. 2.04, 3rd paragraph), and there is no definition of its meaning, and asked if the City Commission's emoluments may increase at times. There needs to be a definition.

- 5. ITEMS REQUESTED TO BE PLACED ON THE AGENDA FOR DISCUSSION ON A FUTURE DATE BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER. (See paragraphs 6 through 18 of Mr. Fernandez's Memorandum; Attached as Item 3) Not reached.
- 6. LIST OF PROPOSED CHARTER AMENDMENTS BROUGHT FORTH FOR DISCUSSION DURING THE APRIL 25, 2013 CHARTER REVIEW & REVISION BOARD COMMITTEE MEETING:
 - Term Limits for the Mayor and Commissioners (Charter Section 2.02) Proponent Commissioner Tobin

5:10:56 p.m.

Board Member Kendle asked to discuss the referendum

- Miami Beach Convention Center Proponent Rick Kendle
- Sale, Exchange, Conveyance or Lease of Ten Years or Longer of Convention Center District Property – Proponent Frank Del Vecchio

Chair Zack read into the record an email from City Manager Jimmy Morales, dated May 6, 2013 to Frank Del Vecchio, regarding referendum, in trying to achieve closure on the issues.

5:12:37 p.m.

Frank Del Vecchio explained that he is requesting for the Board to consider and forward to the Commission for consideration a Charter amendment that will conform the official representations made by the City Commission and City Administration to the Charter. In 2012, the City Commission approved the Miami Beach Convention Center (MBCC) RFQ, and explained the procurement process that would occur regarding the 52 acres. Mr. Del Vecchio suggests and requested that if the Charter Review and Revision Board believes this item has merit, to send it to the full Commission as soon as possible. If the City is ready for September 6 with a definitive deal that could be put on the November ballot, then the possibility of two of the questions can be placed on the ballot, one contingent with the other, regarding what the specific private interests would be. If the City is not ready, a Special Elections ballot can be done. His recommendation to this Board is that this is an important public question, timing is important, and the City Commission is the body to deliberate, so the public will know what to expect.

Discussion held.

Mr. Del Vecchio gave a brief summary, and stated that in reviewing all the records from MBCC public meetings, he composed this proposed Charter amendment for the November 5 ballot; however, there is also a petition being circulated on this issue. Discussion continued regarding petition requiring 10% of the voter's signature, and then this would trigger a referendum.

Chair Zack stated that there are major interests that can get a petition on the ballot, and asked if this is something to look at.

Raul Aguila, Chief Deputy City Attorney, explained that regardless of the different arguments posed, the legal requirement under the Charter at this time would be that only a sale or lease of more than ten years of a use on the Convention Center parking lots, (P-lot and the parking lot behind the Fillmore) would actually trigger a referendum requirement. That is what the Charter requires, and it is the position the City Attorney's Office is taking in the Letter Of Intent. The second issue is considering Mr. Del Vecchio's proposal today; there is Mr. Del Vecchio's proposal, and a proposed Charter amendment language that is being pursued through an initiative process. There are two issues for the City: 1) Timing, which the City Manager is concerned about and wanted me to convey to the Board; and 2) Mr. Del Vecchio's requirements and the initiative requirement, if they get on the ballot at the same time, there is the legal issue that if both passed, which one would govern?

Discussion continued.

Jorge Gomez, Assistant City Manager, and Richard Lorber, Planning Director, made a presentation and explained the areas representing the 52-acre parcel. Both proposers (Portman-CMC and South Beach Ace / Tishman) have shown elements of the plans that would trigger a referendum, unless the Commission decides to reduce the program. The hotel in both projects is on the footprint of the Convention Center. If the Charter question fails, the components on the two lots could not go forward, but the hotel on the roof of the MBCC might go forward, if it was still financially feasible for them to develop.

Discussion continued.

Chair Zack stated that the petition does not change the Charter, only puts it on the ballot.

Board Member Fernandez stated that in researching this issue, this Board (10 years ago) discussed the same issue concerning the New World Symphony. At that time, it was determined that any decision or revision of the CRB would be prospective in nature, and they were explicit in saying that their decisions should not delay or interfere with any projects currently in consideration. Therefore, he asked if any action of this Board is applicable to this, he thinks this is a policy issue for the City Commission, and they do not establish this Board to look at the MBCC project, and he feels it is outside the scope of the CRB.

Chair Zack stated that to rephrase Member Fernandez's comments, this matter of the MBCC is out of order for the CRB to discuss. He explained that this would not be appropriate in the Charter but he would open it up for discussion and a vote.

Member Fernandez explained that the issue that Mr. Del Vecchio brought up is very important and merits discussion, but going into the future, not as it relates to this specific project.

Discussion held.

Member Lalonde asked Raul Aguila, Chief Deputy City Attorney, if Mr. Del Vecchio would have another forum to introduce his issue. Mr. Aguila explained that there have always been discussions aside from the legal requirements under the Charter that pertain to the City lots, and policy discussion has been held at Commission level

whether or not the entire project should be subject to a straw ballot referendum or non-binding referendum question; if Mr. Del Vecchio is looking for an alternate forum to make the other uses on the project subject to Citywide referendum, the City Commission is an appropriate forum, and if the Commission wants to considers that, it can go to the ballot in November. Discussion continued.

Discussion continued regarding MBCC referendum.

Chair Zack stated that it would be great for citizens to know what they are voting on in concept.

FINAL MBCC REFERENDUM MOTION:

Member Fernandez made a motion that the MBCC referendum issue is out of order for consideration by the CRB, but nothing that is being done by the Charter Review and Revision Board goes to the merit of Mr. Del Vecchio's proposal, and Mr. Del Vecchio should seek another avenue to address this issue; seconded by Member Lalonde; 5-1; Opposed: Member Kendle; Absent: Member Preira.

Chair Zack made a friendly amendment, to add that nothing that is being done goes to the merit of this proposal and to allow Mr. Del Vecchio another avenue to which he can address this issue.

Citizens' Bill of Rights:

- Article XV To include traffic Proponent Stephen Zack, Chair Not reached.
- ii. Ethics in government / Code of conduct Proponent Stephen Zack, Chair Chair Zack explained that the State Ethics Commission has rules on that issue; and he believes they increased ethical guidelines. He asked who handled ethical issues.

Deborah Turner, First Assistant City Attorney, explained that Legal Department handles these issues, and at times they ask the Commission on Ethics for opinions.

Board Member Fernandez stated that he has spoken with Joseph M. Centorino, Executive Director of the Miami-Dade Commission on Ethics. Mr. Fernandez asked the CRB members to consider giving the Commission on Ethics investigative enforcement authority over alleged violations of the Citizen's Bill of Rights. He explained that the Bill of Rights can only be enforced by litigation in court, and his concern is given the economic rate of disparity in the community, that it would be beneficial to those who do not have access to litigation and/or attorneys to have the Commission on Ethics investigate possible violations. He also spoke to Mr. Centorino regarding allowing the Commission on Ethics to investigate and enforce issues pertaining to the Sunshine Law, Public Record Law and Campaign Finance Law.

Board Member Kendle commended the proposals done by Miami Beach United. Discussion continued. This issue will be discussed at a later time.

- iii. Over scale development in residential areas Proponent Stephen Zack, Chair Not reached.
- iv. Preservation of beaches Proponent Rick Preira Not reached.
- v. Mandate that employees should be courteous to citizens in the Bill of Rights Proponent Stephen Zack, Chair Not reached.
- vi. Neighborhood Resident Association Bill of Rights Proponent Miami Beach United Nancy Liebman, President

Terry Bienstock, President of Sunset Islands III and IV, explained that the proposed amendment for the Resident's Bill of Rights identifies issues of enforcement to give Neighborhood Residents Associations nonpartisan opportunities to participate in quasi-judicial boards.

- One of the deficiencies is giving specificity on some issues on due process, the opportunity to be heard, present witnesses, reviewing documents, and added that the only enforcement in the Bill of Rights today is in court. The group came up with ideas based on what other municipalities have done.
- The right to be heard shall be made bilateral; if a proponent has rights, the
 resident shall have similar rights. In addition, they proposed that a resident
 does not need to have counsel to exercise his/her right to be heard.
- The right to notice with time limitations and advance notices to the public, with penalty if notice is not timely.
- The right to a public hearing that notice is given to resident associations that have jurisdiction within the area.
- In the Ethics section, they proposed that once a year board members and City employees sign and acknowledgement that they receive and will honor the Bill of Rights.
- On remedy section, instead of two ways of complaining, one is to the City Manager or designee, or a board of residents established by the Commission set forth by Code that have the power to adjudicate issues.
- The Neighborhood Association Section 7 gives all the rights that individual have through HOA's. Other communities enforce this in the Code, so this has been left open.

Nancy Liebman, President of the Association, stated that they are trying to vet this to define what a Neighborhood Association is. Discussion held.

Christine Florez, member of Miami Beach United, spoke.

Member Kendle stated that Miami Beach was one of the first municipalities to have a Citizen's Bill of Rights, but there was no enforcement, and it is important and should be looked at and how it affects residents. Discussion held.

Member Fernandez explained that he had a conversation with Joseph Centorino, Miami-Dade County Commission on Ethics and Public Trust, about the Citizen's Bill of Rights, to give his agency authority for the Citizen Bill of Rights, for those people that do not have the financial means to go through the litigation process, as it is too expense. Mr. Centorino is open to the possibility, at no fiscal impact to the City, to undertake this task. Mr. Fernandez stated that this would be of great benefit to the City.

Gary Held, First Assistant City Attorney, explained that the Code states that the Ethics Commission has authority over County and Municipal Bill of Rights. Discussion held.

Chair Zack added that the evolution of the Bill of Rights is enforcement, including possibly an attorney's fees provisions for violators and for injunction relief. This Board should talk about how to further refine this section. He does not understand why neighborhood associations need this. Everyone should have the same rights, no matter what association they belong to. He does not understand why it should be separate.

Christine Florez stated that the issue is noticing requirements.

Terry Bienstock gave examples of lack of noticing that affected the neighbors.

Nancy Liebman spoke. Discussion continued.

Member Lalonde spoke on the Palau project, and for the record, disclosed that she is a member of the Sunset Island Associations III and IV and secretary thereof. The Islands were impacted by that project, but the only person with standing was one resident. Residents look to the Neighborhood Association President to represent them.

Discussion continued.

Chair Zack asked if their suggestions will solve all issues, and he thinks they have the full right for enforcement. Discuss it and do not limit yourselves. Residents should be entitled to all rights. Discussion continued regarding enforcement, attorney fees and injunctions.

Richard Lorber explained the noticing process and difficulties when addresses change and bring burden to City staff. Discussion held. **Item to be placed at the next Charter Review & Revision Board Agenda for further discussion.**

- vii. Preserving the historical value of Miami Beach Proponent Terry Bienstock Not reached.
- viii. Whistle blowing protection for employees Proponent Frank Del Vecchio Not reached.

 Administrative Determinations Proposed and Published by the Planning Director – Proponent Commissioner Jonah Wolfson.

5:52:16 p.m.

Richard Lorber, Planning Director, made a presentation and explained the proposal by Vice-Mayor Wolfson. He stated that Administrative Determinations are done on a day-to-day basis, and he distributed an example of LTC 102-2012, having to do with transferring development rights from one parcel to another and its determination; and eventually this can be appealed to the Board of Adjustment. These determinations are available on the City's website and transmitted to the City Commission via LTC. Mr. Lorber added that ultimately if there are ten Administrative Determinations, this should be taken in front of the Land Use and Development Committee, as this should be recodified, and he recommends to the City Commission to amend it as it was interpreted.

Gary Held, First Assistant City Attorney, in answering Member Lalonde's question, stated that the issue is whether the Administrative Determinations should be required by Charter to be published or whether it should be a Code requirement or just a matter of policy. Discussion continued.

Chair Zack stated that the important issue is that it be consistent, published in a way that is usable, and that there is an appellate process.

MOTION ON ADMINISTRATIVE DETERMINATION

Motion by Member Lalonde that this issue is out of order for consideration to the CRB, but encourage the Department to continue making the Determinations available publicly; 6-0: Absent: Member Preira.

Subpoena powers - Proponent Alex Fernandez
 4:41 p.m.

Chair Zack stated that Page 7 of the Charter, Section 2.03 regarding Powers of City Commission, third paragraph reads: "the Commission may also investigate the official acts and conduct of any City official, and by similar investigations may secure information upon any matter. In conducting such investigations, the Commission may require the attendance of witnesses and the production of books, papers and other evidence." Mr. Zack explained that his belief is that the only manner to do this is with Subpoena Power; however, he asked advice from the Legal Department.

Debora Turner, First Assistant City Attorney, introduced Alex Boksner to clarify this matter.

Senior Assistant City Attorney, Alex Boksner, explained that he has done research with other municipalities that may or may not have this provision, such as Miami and Fort Lauderdale. In the City of Fort Lauderdale, they do not have such authority and they grant the authority by a way of an "investigative arm" essentially that has the ability to subpoena individual and records. The City of Miami has this subpoena power in the Charter, but he is still looking at other municipalities in terms of how they function, in what would be the best course of action should something to that extent be thought of by the City of Miami Beach. In answering Chair Zack's question, he explained that an "investigative arm" is someone that is given the authority to investigate. For example in Miami Beach, the Procurement Director can be an investigator that investigates the

debarment contract. It is a body that is created and given authority to issue and conduct an investigation and it has the authority to do it.

Discussion held.

Chair Zack stated that there is a conflict in this section, and a Resolution should be added to that section. They need to understand if they wish to give Subpoena Powers to the Commission. He requested legal advice. **Alex Boksner to handle.**

Board Member Fernandez stated that from research that he has done, during the last Charter Review ten years ago, Mr. Abraham Laeser had concerns about information being covered with immunity, and individuals and witnesses being covered with immunity if the issues were of a criminal nature. His question is whether this language on the Charter was left so that the City Commission could still be empowered to conduct investigations that may not rise to the level of criminal acts or corruption, but still merit investigation. He asked the Legal Department to find out when was the period when this language was left on the Charter. **Alex Boksner to handle.**

Creation of an Inspector General with investigative powers - Proponent Rick Kendle

Chair Zack stated that in Page 7 of the Charter, Section 2.03, fourth paragraph regarding Independent City Auditor, it does not address its responsibility. Are there limitations that need to be added; how does that auditor function work since the last Charter Review. This needs to be addressed.

Jorge Gomez, Assistant City Manager, stated that in Division 4, Section 2-251 of the City Code, the duties of the Independent City Auditor are enumerated. Chair Zack asked Mr. Gomez to provide the committee members with the Section of the Code. Mr. Gomez added that the City has an auditor department that generates comparative reports. Discussion held. **Jorge Gomez to handle.**

4:53:24 p.m.

New Item

Chair Zack referred to Charter Section 4.02 on Page 10, where it seems that there is a requirement for an evaluation of the City Manager, (Paragraph b); but there is no full requirement that the City Manager has an employee evaluation of every employee; it seems that this should be included in the Charter.

Rafael E. Granado, City Clerk, explained that the Personnel Board reviews any evaluations that are late more than 30 or 60 days, and that is part of their standard.

Chair Zack asked for an evaluation form, to review if there is the issue of courtesy, timeliness, etc., in that evaluation process. **Rafael E. Granado to handle.**

ITEMS TO BE PLACED AT THE NEXT AGENDA;

- 1. LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW
 - Debora Turner, First Assistant City Attorney to make Presentation
- 2. ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.
 - Bifurcating recommended Charter Amendments to the City Commission by two tiers
 - a) Items of time sensitive nature to include in the November 2013 ballot
 - b) Items that are not time sensitive and may merit extended debate
 - (See paragraphs 1 through 5 of Mr. Fernandez's Memorandum; Attached as Item 3)
- 3. CITIZEN'S BILL OF RIGHTS

SUMMARY OF ITEMS DISCUSSED AND ACTIONS TAKEN

- ESTABLISH FUTURE MEETING DATES.
- ITEMS REQUESTED BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.
 - 1. Advertise meeting notices, agendas on Spanish publications. Approved.
- COMMISSION SALARY Issue to be discussed at a later time.
- MBCC REFERENDUM MOTION Issue deemed out of order.
- MOTION ON ADMINISTRATIVE DETERMINATION Issue deemed out of order.

SUMMARY LIST OF PENDING ITEMS FOR DISCUSSION

- ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.
- ADDITIONAL ITEMS REFERRED TO THE CHARTER REVIEW & REVISION BOARD BY THE CITY COMMISSION:
 - Election versus Appointment when Commission vacancies occur. (Referred at the May 19, 2012 Commission Retreat) Not reached at the 5/6/13 Meeting.
- ITEMS REQUESTED TO BE PLACED ON THE AGENDA FOR DISCUSSION ON A FUTURE DATE BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.
- LIST OF PROPOSED CHARTER AMENDMENTS BROUGHT FORTH FOR DISCUSSION DURING THE APRIL 25, 2013 CHARTER REVIEW & REVISION BOARD COMMITTEE MEETING:
- CITIZENS' BILL OF RIGHTS:
 - Article XV To include traffic Proponent Stephen Zack, Chair

Over scale development in residential areas – Proponent Stephen Zack, Chair Preservation of beaches - Proponent Rick Preira

Mandate that employees should be courteous to citizens in the Bill of Rights - Proponent Stephen Zack, Chair

Preserving the historical value of Miami Beach - Proponent Terry Bienstock Whistle blowing protection for employees - Proponent Frank Del Vecchio

- LIST OF CHARTER PROVISIONS IDENTIFIED BY THE CITY ATTORNEY FOR REVIEW
- ITEMS REQUESTED TO BE PLACED ON THE MAY 6, 2013 AGENDA BY ALEX FERNANDEZ, CHARTER REVIEW & REVISION BOARD MEMBER.
- CITIZEN'S BILL OF RIGHTS